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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,574	11/13/2003	David S. Ruch	10031US	8790
7590	04/08/2008		EXAMINER	
William D. McSpadden BAKER & MCKENZIE 2300 Trammell Crow Center 2001 Ross Avenue Dallas, TX 75201			ARAJ, MICHAEL J	
			ART UNIT	PAPER NUMBER
			3733	
			MAIL DATE	DELIVERY MODE
			04/08/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/712,574	RUCH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	MICHAEL J. ARAJ	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 February 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-34 and 37-39 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-34 and 37-39 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 13 November 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 8, 2008 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 -34 and 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Mata et al. (U.S. Patent No. 5,891,144).

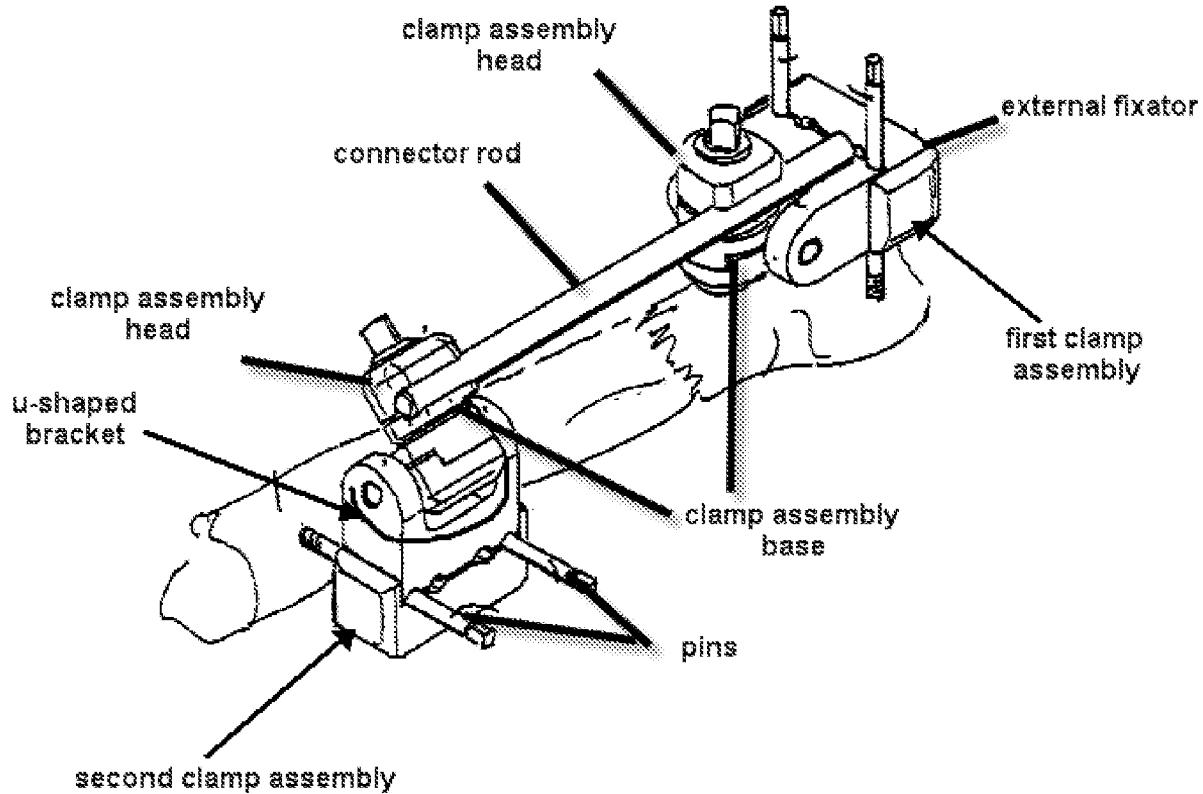
Mata et al. disclose an apparatus that can be made with plastic comprising a first clamp assembly comprising a bracket operable to removably mount to an external fixator and couple to a connector rod comprising a clamp assembly base seated on the bracket and a clamp assembly head disposed over the clamp assembly base, as well as including a second clamp assembly operable to releasably couple to at least one bone pin embedded in a bone. The connector rod is operable to join the first clamp

assembly to the second clamp assembly (see Fig. 1 below). The connector rod is also in an elevated position relative to the external fixator to permit extension of the connector rod across a human's extremity in the radial to ulnar direction. The external fixator is attachable to a human's radius and the second clamp is coupled to a bone pin that is embeddable to at least one metacarpal bone of a human (Col. 3, paragraph 2).

The first clamp assembly comprises an assembly clamp operable to attach to a longitudinal member of an external fixator and a clamp assembly head operable to secure the assembly clamp and a connector rod fastener. It also comprises a U-shaped bracket operable to attach to a rod. The second clamp assembly comprises a fastener operable to releasably engage at least one bone pin embedded in a bone and operable to releasably hold the connector rod and clamp assembly head. The second clamp assembly is also rotatable with the use of an additional external fixator as seen in Figure 3. The apparatus is positioned to reduce bony fragments and maintain bony fragments in position. The rod comprises a first end operable to slidably attach to the first assembly clamp and a second end having a body operable to engage the second assembly clamp. The head of the second clamp assembly is deemed circular because it has an oval like appearance from the side profile that has a central opening where the rod can be engaged. With regard the statement of intended use and other functional statements, they do not impose any structural limitations on the claims distinguishable over Mata et al. which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the law of anticipation does not require that the reference "teach"

what the subject patent teaches, but rather it is only necessary that the claims under attack “read on” something in the reference. Kalman v. Kimberly Clark Corp., 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987). Specifically, the connector rod fastener is able to permit extension of the connector rods across a human’s extremity in the radial to ulnar direction if one desired to do so.

Mata et al. also discloses a method of maintaining a human’s wrist in a healing position comprising attaching an external fixator to the radius bone of a wrist, releasably attaching a first clamp assembly to the external fixator, releasably attaching a second clamp assembly to at least one bone pin embedded in a bone of a human and joining the first clamp and second clamp assembly with a connector rod. This device will limit the degree of supination and pronation of a human’s radius and ulna bones by positioning the clamps and connector rods relative to the human’s radius and ulna bones by the way it is attached to the human bone of the radius bone and metacarpals.



**Figure 1**

***Response to Arguments***

Applicant's arguments with respect to claims 1-34 and 37 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. ARAJ whose telephone number is (571)272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J Araj/  
Examiner, Art Unit 3733  
/Eduardo C. Robert/  
Supervisory Patent Examiner, Art Unit 3733